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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ANTONIA RENDON NAVARRO, Defendant and Appellant.	B220824 (Los Angeles County Super. Ct. No. BA345942)

APPEAL from a judgment of the Superior Court of Los Angeles County. William C. Ryan, Judge. Affirmed.

William C. Hsu, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon, Supervising Deputy Attorney General, Joseph P. Lee, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Antonia Rendon Navarro appeals from the judgment entered following her negotiated plea of no contest to charges of possession of cocaine and cocaine base for sale. Defendant contends that the trial court improperly denied her motion to traverse and quash a search warrant and suppress the evidence seized pursuant to that warrant. We affirm.

BACKGROUND

On the afternoon of August 28, 2008, Deputy Michael Gaisford applied for and obtained a warrant to search defendant's home, vehicle, and El Troquera Restaurante, where defendant worked, for all forms of cocaine and various materials and items used in the storage and sale of cocaine. Gaisford's affidavit in support of the warrant application stated that he was assigned to the "East Los Angeles Narcotics Crew" and set forth his expertise regarding drug possession and sales. It stated, "Within the last 10 days, I . . . received information from a confidential reliable informant (hereinafter referred to as the 'CRI') that a female Hispanic known to the CRI as 'Toña' is selling rock cocaine to prospective customers in the City of Los Angeles from her workplace. The CRI knows 'Toña' to sell rock cocaine from the 'El Troquera Restaurante' located at [address]. [¶] I believe the CRI to be a reliable informant for the following reasons: Within the last two months members of the East Los Angeles Narcotics Crew have received information from this informant, which resulted in obtaining a search warrant and the arrest of an individual for narcotic related offenses. . . . The informant has never given me or any of my teammates/co-workers any false or misleading information." During the week before he applied for the warrant, Gaisford conducted a controlled buy at the El Troquera Restaurante, using the CRI, who was searched before going into the restaurant and provided with money to make the purchase. Gaisford and Detective Garcia watched as the CRI went into the front of the restaurant, then the CRI and a woman matching defendant's description walked out the rear of the restaurant, engaged in a brief conversation, and made an exchange of items. While watching the restaurant, Gaisford and Garcia observed two other hand-to-hand exchanges between the same woman and

individuals who arrived at the restaurant, then left soon thereafter. Gaisford and Garcia met the CRI at a prearranged location, and the CRI handed over some rocks that later tested positive for cocaine and said he had purchased it from "Toña." The affidavit stated that Gaisford and Garcia never lost sight of the CRI.

Gaisford used "departmental resources" and surveillance to determine defendant's name, address, and driver's license number. He obtained her photograph from the Department of Motor Vehicles and recognized her as the woman who sold rock cocaine to the CRI. He showed the photograph to the CRI, who said, "That's her." Gaisford and Garcia conducted additional surveillance at the restaurant and defendant's house and saw her driving between the two locations. Gaisford opined that defendant was selling rock cocaine from the restaurant, storing it at her home, and using her vehicle to transport it from home to the restaurant as needed.

The search warrant was executed on September 3, 2008. Immigration and Customs Enforcement (ICE) agents participated in the search of defendant's house, along with sheriff's department personnel. When officers entered the restaurant, defendant left through the back of the restaurant, got into her vehicle, and drove away. Gaisford followed her in his car and detained her at a car wash. Defendant's purse contained cash. The searching officers found one rock of cocaine base in a freezer at the restaurant. At defendant's house, they found numerous baggies containing "a substantial amount" of powdered cocaine and "a substantial amount" of rock cocaine, a large amount of cash, five digital scales, three metal pans bearing cocaine residue, small plastic bags, razor blades, and chemicals used for "cutting" cocaine. The total amount of cash recovered was $8,200. Laboratory testing on three baggies of white powder revealed a net weight of 524 grams containing cocaine. Testing on two containers of solids revealed a net weight of 154.57 grams containing cocaine base. The lab did not test an additional 43 containers of white powder with a gross weight of 537 grams. Defendant waived her right to silence and the presence of counsel and told the officers that all of the items seized were hers and she was selling cocaine.

Defendant filed numerous motions for discovery of wiretap evidence and information about an antecedent ICE investigation, each of which was denied. The prosecution obtained ICE's report regarding its participation in execution of the search warrant, and the prosecutor provided that to defendant. Defendant also moved unsuccessfully for disclosure of the CRI's identity. In conjunction with that motion, the trial court conducted an ex parte, in camera hearing at which Gaisford testified. He clarified that he received a "tip" from his own CRI, then used the CRI to conduct a controlled buy, which was the basis for the application for a search warrant. The contraband discovered and seized during the searches pursuant to that warrant, not the controlled buy, was the basis for the charges against defendant. Gaisford also clarified that a second "CRI" was a law enforcement officer, not an actual informant. The court explored the issue of ICE's involvement. Gaisford testified that ICE's sources of information were independent of the sheriff's department's sources. The only information provided by ICE that Gaisford used was a photograph of defendant that Gaisford would have obtained anyway in due course. The court concluded that the ICE investigation had nothing "to do with this investigation" and found no basis for revealing the CRI's identity.

Defendant filed a motion to traverse and quash the search warrant, and to suppress evidence, arguing that Gaisford omitted from his warrant application the following facts: that another government agency was involved in the investigation, how he came into contact with the CRI, the existence of a second CRI, and "a purchase from a person other than defendant at the restaurant." A copy of Gaisford's "case journal" attached to the motion included the following entries: "primary was identified by separate CRI. CRI provided me with photos and personal information on primary" and "CRI also told us that [redacted] has purchased rock cocaine from a M/H/50-52 with bald spot, 5'09'/160 lbs." On the date of the hearing, defendant provided a declaration, stating, "At no time during August, 2008, or at any other time, have I personally handed cocaine to any person as alleged in the application. At no time during August, 2008, or at any other time, have I

personally sold cocaine to any person as alleged in the application." At the hearing, defense counsel argued that the CRI might have been "working for money" or "working to pay off a case, which is often what is done in the federal system." The trial court denied the motion.

Defendant entered a negotiated plea of no contest to charges of possession of cocaine for sale and possession of cocaine base for sale and admitted allegations that she possessed more than one kilogram of cocaine and had two prior convictions for possession of cocaine base for sale. The court sentenced defendant to six years in prison.

Defendant did not obtain a certificate of probable cause.

DISCUSSION

Although defendant merely asks this court to review sealed transcripts from three in camera, ex parte hearings conducted long before she ever filed her motion to traverse, quash, and suppress, she argues this appeal is "based on the trial court's denial of a motion to suppress evidence." The motion to suppress was based upon the motion to traverse and quash the warrant pursuant to which the searches were conducted. We thus conclude that defendant challenges the trial court's denial of her motion to traverse, quash, and suppress.

We first address the portion of the motion seeking to traverse the warrant, as that was key to any effort to quash it and suppress the evidence seized during its execution. "Under *Franks v. Delaware* [(1978)] 438 U.S. 154 [98 S.Ct. 2674], a defendant has a limited right to challenge the veracity of statements contained in an affidavit of probable cause made in support of the issuance of a search warrant. When presented with such a challenge, the lower court must conduct an evidentiary hearing *if* a defendant makes a substantial showing that (1) the affidavit contains statements that are deliberately false or were made in reckless disregard of the truth, and (2) the affidavit's remaining contents, after the false statements are excised, are insufficient to support a finding of probable cause. The defendant must establish the statements are false or reckless by a preponderance of the evidence." (*People v. Panah* (2005) 35 Cal.4th 395, 456 (*Panah*).)

An innocent or negligent misrepresentation is insufficient. (*Ibid.*) The affidavit is presumed to be valid, and the defendant's motion for an evidentiary hearing must be supported by an offer of proof. (*Ibid.*) The defendant should provide affidavits or otherwise reliable statements of witnesses or explain the failure to do so. (*Ibid.*) The trial court is not required to conduct an evidentiary hearing if the defendant's attack on the affidavit is conclusory or simply based upon a desire to cross-examine. (*Ibid.*) Mere self-serving denials in a defendant's declaration "are routinely discounted in determining whether a showing for a *Franks* hearing has been made out." (*People v. Benjamin* (1999) 77 Cal.App.4th 264, 274 (*Benjamin*).)

A defendant who challenges a search warrant on the basis of omissions from the supporting affidavit bears the burden of showing that the omissions were material to the probable cause determination. (*Panah*, *supra*, 35 Cal.4th at p. 456.) Omitted facts are material if "their omission would make the affidavit *substantially misleading.* . . . [F]acts must be deemed material . . . if, because of their inherent probative force, there is a substantial possibility they would have altered a reasonable magistrate's probable cause determination." (*People v. Kurland* (1980) 28 Cal.3d 376, 385.) An affiant who knows or should know specific facts—such as police threats or coercion—bearing adversely on an informant's probable accuracy must disclose those facts. (*Id.* at p. 395) But an affiant need not include details of the criminal history of a "garden-variety" police informer: "[I]n most cases, the issue of possible unreliability is adequately presented to the magistrate when the affidavit reveals that the affiant's source of information is not a 'citizen-informant' but a garden-variety police tipster. In such circumstances, predictable details of the informer's criminal past will usually be cumulative and therefore immaterial." (*Id.* at p. 394.)

Defendant's motion was primarily based upon Gaisford's failure to include in his affidavit any mention of the involvement of another government agency, how Gaisford came into contact with the CRI, the existence of a second CRI, and a drug sale by a second person at the restaurant. The trial court had already found that the sheriff's

department's investigation was independent of any investigation that ICE had conducted. But even if, as defendant argued, ICE or another agency had been involved in this investigation, even if ICE introduced Gaisford to the CRI, and even if there were a second CRI and a second person selling drugs at the restaurant, the affidavit was not substantially misleading and it demonstrated ample probable cause for issuance of the warrant. Although Gaisford believed the CRI was reliable based on his "crew's" experience with the CRI, Gaisford conducted a controlled buy in which the CRI was searched beforehand. Gaisford watched defendant engage in a hand-to-hand exchange with the CRI and kept the CRI under observation until the CRI met up with Gaisford and Garcia and turned over the cocaine he or she had purchased from defendant. In the same time period, Gaisford saw defendant engage in hand-to-hand transactions in back of the restaurant with two other people. Thus, even if someone else was selling drugs at the restaurant, even if defendant were suspected of some illegal conduct by ICE, and even if the CRI had some sort of relationship with ICE, the affidavit established ample probable cause to believe that defendant was selling drugs from the restaurant. Gaisford's observations of defendant driving between the restaurant and her house, along with his experiences in narcotics investigations and the diminished control and privacy and increased risks of loss and detection inherent in storing contraband at a restaurant, established probable cause for the search of defendant's house, also. The purported involvement of a second "CRI," whom Gaisford previously testified was actually a law enforcement agent, was limited to providing a photograph of defendant and some identifying information about her, and does not detract from the showing of probable cause. Gaisford had observed defendant's conduct sufficiently to know where she lived and worked and which vehicle she drove. He could have determined her name, photograph, and other identifying information through additional investigation using these three key facts.

To the limited extent defendant's motion was based upon her declaration contradicting Gaisford's affidavit, it was also insufficient to require the trial court to hold an evidentiary hearing or grant defendant's motion. The recovery of a large quantity of

cocaine—in both powdered and rock form—along with five digital scales, three pans bearing cocaine residue, baggies, cutting agents, and a large quantity of cash from defendant's home supported the truthfulness of Gaisford's statements in his affidavit. (*Benjamin*, *supra*, 77 Cal.App.4th at pp. 275–276.) In addition, we note that defendant's declaration did not comply with the requirements of Code of Civil Procedure, section 2015.5, in that it did not include "under the laws of the State of California" or indicate the place of execution.

With respect to defendant's attempt to quash the warrant, we must defer to the magistrate's finding of probable cause unless the warrant is invalid as a matter of law. (*People v. Thuss* (2003) 107 Cal.App.4th 221, 235.) In determining whether probable cause supported the issuance of the warrant, the issue is "whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing." (*People v. Kraft* (2000) 23 Cal.4th 978, 1040.) The issuing magistrate must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238 [103 S.Ct. 2317].) Whether the magistrate had a substantial basis for concluding there was probable cause to search is a question of law and therefore subject to independent review. (*People v. Camarella* (1991) 54 Cal.3d 592, 601.) Defendant bears the burden of establishing the invalidity of the warrant. (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 101.)

An examination of Gaisford's affidavit demonstrates ample probable cause to believe that contraband would be found at the restaurant and at defendant's house. The trial court did not err by denying defendant's motion to quash.

Absent success on the motion to traverse and quash, no ground existed to suppress the evidence seized during the searches.

Defendant requests that this court review sealed transcripts from two in camera, ex parte hearings conducted before the preliminary hearing and a third conducted on April 21, 2009, in connection with her motion to discover the CRI's identity. The trial court did not review these transcripts when it ruled upon defendant's motion to traverse, quash, and suppress, and it is not apparent how they could be material to the review of the denial of that motion. Nevertheless, we augmented the record on our own motion with the April 21, 2009 transcript, which was the only one available, and reviewed it, as reflected in the preceding discussion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.